IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2010 OF 2006.
IN
FIRST APPEAL NO. 558 OF 1989.

Gangadhar Dhondu Khedekar. ... Applicant.
Versus.
M/s.Bombay Spectacles. ... Respondents.

Shri Rahul S,Kate for the Applicant.

CORAM : ABHAY S.OKA, J.

DATED : 17th April, 2006.

P.C.:

1. Not on board. Taken on board on the application of the Advocate for the applicant.

2. Heard the learned Advocate appearing for the Applicant. In Civil Application No.2790 of 1989, ad-interim order was passed on 23rd June 1989 which reads thus:

> "Rule and interim stay of decree for possession on usual terms."

The said Civil Application came up before this Court on 16th March 2006. The remark of the office showed that the security was not furnished by the Applicant in terms of the ad-interim order. Therefore, the said Civil Application No.2790 of 1989 was disposed of by order dated 16th March 2006 by granting time of four weeks to furnish security as a condition for confirming the

ad-interim relief.

3. In the present application an averment has been made in paragraph 2 that as there was no direction specifically given to furnish security, the office of the City Civil Court did not accept the security when tendered by the Applicant.

4. On 28th June 1989, the writ of the ad-interim order was issued to the City Civil Court in which it was specifically mentioned that the Applicant was directed to furnish security to the satisfaction of the City Civil Court. The said writ is noted and returned by the concerned Officer of the City Civil Court on 25th October 1990. Inspite of the receipt of the said writ, it is shocking to note that the office of the City Civil Court has refused to accept the security. The ad-interim stay of decree for possession was granted on usual terms. The usual terms are reflected in Sub-Rule (3) of Rule 5 of Order XLI of the Code of Civil Procedure, 1908. Sub-Rule (3) provides that no order of stay of execution shall be made under sub-rule (1) or sub-rule (2) of Rule 5 unless the Court making the order is satisfied that the security has been given by the Applicant for due performance of such decree or order as may ultimately be binding upon him. When this Court granted stay on usual terms, it was obvious that the

reference was to compliance with clause (c) of Sub-Rule (3) of Rule 5 of Order XLI of the said Code which requires the Applicant to give security for due performance of the decree. By ignoring the specific writ issued by this Court and by over-looking the provisions of law, the Office of the City Civil Court has refused to take security which was tendered by the Applicant. Therefore, time granted by this Court to furnish security in terms of order dated 16th March 2006 deserves to be extended. Accordingly time for furnishing security is extended by a period of six weeks from today. If compliance is not made within the period of six weeks, ad-interim relief granted on 23rd June 1989 will stand vacated. The Registrar, Judicial-I will forward a copy of this order to the Registrar of the City Civil Court, Mumbai. C.A. disposed of.

Judge.